In Re:

Sault Ste. Marie Tribe of Chippewa Indians, Resolution No. 2006-101, amendment to Tribal Code § 42.801, Gaming Ordinance

Final decision and order

September 1, 2006

On August 29, 2006, the Sault Ste. Marie Tribe of Chippewa Indians (Tribe) submitted for approval Resolution No. 2006-101, which adopted a site-specific amendment to its gaming ordinance. Tribal Code § 42.801(c). The Tribe requested a final agency decision with respect to the amendment and waived its right to an administrative hearing.

The Tribe's relies on two statutory exemptions to the Indian Gaming Regulatory Act's (IGRA) general prohibition of gaming on trust land acquired after October 17, 1988. We conclude that neither exemption applies to the subject land. Therefore, the ordinance amendment submitted by the Tribe is DISAPPROVED.

STATUTORY, PROCEDURAL, AND FACTUAL BACKGROUND

Tribal gaming ordinances must be approved by the NIGC Chairman before becoming effective. 25 U.S.C. § 2710(b)(1)(B), (d)(1)(A)(iii). A Tribe may appeal the Chairman's disapproval of its gaming ordinance to the full Commission pursuant to 25 C.F.R. § 524.1. The Tribe asks us to have the full Commission, rather than the Chairman alone, review the ordinance for approval or disapproval, an action we took in *In re: Wyandotte Nation Amended Gaming Ordinance* (Sept. 10, 2004).

The NIGC Chairman approved the Tribe's original gaming ordinance on December 9, 1994. The Chairman approved two subsequent amendments on July 29, 1999, and March 24, 2005.

The original gaming ordinance defined "Indian land" as:

> (1) land within the limits of the Reservation; or (2) land over which the Tribe exercises governmental power and that is either: (a) held in trust by the United States for the benefit of the Tribe or a member of the Tribe; or (b) held by the Tribe or a member of the Tribe subject to restriction by the United States against alienation."

Sault Ste. Marie Tribe of Indians Tribal Code Chapter 42: Gaming Ordinance at 42.217. The ordinance further stated:

> "Reservation," when not qualified, means the Sault Ste. Marie Tribe of Chippewa Indians Indian Reservation and any other lands designated for the Tribe as reservation lands by the Secretary of the Interior."

Id. at 42.230. Neither the 1999 or 2005 amendments altered these definitions.

On August 29, 2006, the Tribe amended its gaming ordinance to specifically allow gaming on a parcel of land in St. Ignace, Michigan (St. Ignace parcel)[1]. Gaming Ordinance § 42.801(c). The Tribe has previously submitted documentation supporting its claim that the St. Ignace parcel meets two separate exceptions to IGRA's general prohibition on gaming on lands acquired after October 17, 1988. 25 U.S.C. § 2719. Because the St. Ignace parcel was taken into trust after October 17, 1988, it must fall

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[1] Lot 2, Section 19, Town 41 North, Range 3 West, and the South ½ of the Southwest ¼ of said Section 19, Town 41 North, Range 3 West, lying Southerly of a line described as beginning at a point 650 feet Northerly along the centerline of Mackinac Trail and South line of Section 19; thence Northeasterly to the Southeast corner of the Northwest ¼ of the Southwest ¼ of Section 19, Town 41 North, Range 3 West, Michigan Meridian. Michigan.

within one of the exceptions laid out in § 2719 for gaming on the parcel to be permissible under IGRA.

DISCUSSION

We do not typically forego the Chairman's issuance of an ordinance disapproval letter and any resultant appellate process. However, we do so here for several reasons. The question of whether the Tribe may game on the St. Ignace parcel has been under review by the Department of the Interior (DOI) and the NIGC for some time, and the Tribe has finished construction of a casino at St. Ignace and wishes a speedy decision on the eligibility of the lands for gaming under IGRA. In this instance, we believe it in the best interests of both the Commission and the Tribe to resolve this matter expeditiously.

The Tribe's first claimed exception is that the St. Ignace parcel, taken into trust by the United States for the benefit of the Tribe in 2000, qualifies as lands "located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988" pursuant to 25 U.S.C. § 2719(a)(1). The Tribe argues that the adjoining parcel, taken into trust in 1983,[2] constitutes a pre-1988 reservation for purposes of IGRA. The NIGC conferred with the DOI Office of the Solicitor on this issue. On February 14, 2006, the DOI issued an opinion that the 1983 parcel does not constitute a reservation for purposes of IGRA. Letter from Edith R. Blackwell, Acting Associate Solicitor,

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[2] That portion of Section 19, Town 41 North, Range 3 West described as: All of the NW ¼ of the SW ¼ and all of the S ½ of the SW ¼ Northerly of a line described as beginning 650 feet Northerly along the centerline of Highway "Mackinac Trail" from the intersection of said centerline with the South section line of Section 19, Town 41 North, Range 3 West; thence Northeasterly to the Southeast corner of the NW ¼ of the SW ¼ of said section. Except the highway right of way and easements of record. Containing 65 acres more or less.

Division of Indian Affairs, to Philip N. Hogen, Chairman, NIGC. For the reasons stated in that letter, we find that the 1983 parcel is not a reservation under IGRA and that the Tribe may not game on the St. Ignace parcel under 25 U.S.C. § 2719(a)(1).

The Tribe's second claimed exception is that the St. Ignace parcel qualifies as the "restoration of lands for a tribe that is restored to Federal recognition" pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii). The NIGC's Office of General Counsel has examined the applicability of this exception and concluded that the St. Ignace parcel does not qualify as restored lands. The DOI has concurred. Memorandum from Penny J. Coleman, Acting General Counsel, NIGC, to Philip N. Hogen, Chairman, NIGC (July 31, 2006); August 29, 2006, letter from Carl J. Artman, Associate Solicitor, Division of Indian Affairs, to Penny J. Coleman, NIGC Acting General Counsel. We adopt the Office of General Counsel's opinion and find that the Tribe may not game on the 2000 parcel under 25 U.S.C. § 2719(b)(1)(B)(iii).

DECISION AND ORDER

Section 2719 of IGRA provides that gaming shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless certain exceptions are met. The St. Ignace parcel was acquired in trust after October 17, 1988. As discussed above, the St. Ignace parcel does not meet any of the exceptions to IGRA prohibition of gaming on lands acquired into trust after October 17, 1988. Therefore, the Tribe may not lawfully game on the St. Ignace parcel. Consequently, we DISAPPROVE the amendment to the Tribe's gaming ordinance submitted here.

It is so ordered by the National Indian Gaming Commission this 1st day of September, 2006.

Philip N. Hogen
Chairman

Cloyce V. Choney
Commissioner